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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 ) Civil No. 09CV2109 BEN(RBB)  
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12 In Re SONY VAIO COMPUTER ) NOTICE AND ORDER FOR EARLY  
NOTEBOOK TRACKPAD LITIGATION ) NEUTRAL EVALUATION CONFERENCE  
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17 Due to the Court's calendar and in order to encourage maximum  
18 participation of all litigants and the Court, good cause appears  
19 to continue the early neutral evaluation conference beyond forty-  
20 five days of the filing of the first answer.

21 IT IS HEREBY ORDERED that an early neutral evaluation of your  
22 case will be held on January 12, 2011, at 8:30 a.m. in the  
23 chambers of United States Magistrate Judge Ruben B. Brooks, United  
24 States Courthouse, 940 Front Street, Room 1185, San Diego,  
25 California.

26 Pursuant to Rule 16.1(c) of the Local Rules of the United  
27 States District Court for the Southern District of California, all  
28 parties, claims adjusters for insured Defendants and non-lawyer

1 representatives with full and unlimited authority<sup>1</sup> to enter into a  
2 binding settlement, as well as the principal attorneys responsible  
3 for the litigation, must be present and legally and factually  
4 prepared to discuss and resolve the case. Corporate counsel shall  
5 not appear on behalf of a corporation as the party representative  
6 who has the authority to negotiate and enter into a settlement.  
7 Failure to attend or obtain a proper excusal will be considered  
8 grounds for sanctions. (Where the suit involves the United States  
9 or one of its agencies, only counsel for the United States with  
10 full settlement authority need appear.) (If Plaintiff is  
11 incarcerated in a penal institution or other facility, the  
12 Plaintiff's presence is not required and Plaintiff may participate  
13 by telephone. In that case, defense counsel is to coordinate the  
14 Plaintiff's appearance by telephone.)

15 Plaintiff's(s') counsel shall give notice of the early  
16 neutral evaluation conference to all defendants filing an answer  
17 after the date of this notice.

18 All conference discussions will be informal, off the record,  
19 privileged and confidential. Absent good cause shown, if any  
20 party, counsel or representative fails to promptly appear at the  
21 settlement conference, fails to comply with the terms of this

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23 <sup>1</sup> "Full authority to settle" means that the individuals at the  
24 settlement conference be authorized to fully explore settlement  
25 options and to agree at that time to any settlement terms acceptable  
26 to the parties. Heileman Brewing Co., Inc. v. Joseph Oat Corp., 871  
27 F.2d 648 (7th Cir. 1989). The person needs to have "unfettered  
28 discretion and authority" to change the settlement position of a  
party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D.  
Ariz. 2003). The purpose of requiring a person with unlimited  
settlement authority to attend the conference includes that the  
person's view of the case may be altered during the face-to-face  
conference. Pitman at 486. A limited or a sum certain of authority  
is not adequate. Nick v. Morgan's Foods, Inc., 270 F.3d 590 (8th  
Cir. 2001).

1 Order, including the failure to timely provide the settlement  
2 conference memoranda WHEN REQUESTED, is substantially unprepared  
3 to meaningfully participate in the settlement conference, or fails  
4 to participate in good faith in the settlement conference, the  
5 settlement conference may be vacated and sanctions may be imposed  
6 pursuant to Rules 16(f) and 37(b)(2)(B), (C), and (D), Federal  
7 Rules of Civil Procedure.

8 In the event the case does not settle at the early neutral  
9 evaluation conference, the parties shall also be prepared to  
10 discuss the following matters at the conclusion of the conference:

11 1. Any anticipated objections under Federal Rules of Civil  
12 Procedure 26(a)(1)(E) to the initial disclosure provisions of  
13 Federal Rule of Civil Procedure 26(a)(1)(A-D);

14 2. The scheduling of the Federal Rule of Civil Procedure 26  
15 (f) conference (except in patent cases where no later than twenty-  
16 one days before the early neutral evaluation conference, the  
17 parties are to meet and confer pursuant to Rule 26(f));

18 3. The date of initial disclosure and the date for lodging  
19 the discovery plan following the Rule 26(f) conference; and

20 4. The scheduling of a case management conference pursuant  
21 to Federal Rule of Civil Procedure 16(b).

22 The Court will issue an order following the early neutral  
23 evaluation conference addressing these issues and setting dates as  
24 appropriate.

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1 Questions regarding this case may be directed to the  
2 magistrate judge's research attorney at (619) 557-3404.

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4 Dated: November 22, 2010

  
RUBEN B. BROOKS  
United States Magistrate Judge

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6 cc: All Parties of Record  
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27 A Notice of Right to Consent to Trial Before a United States  
28 Magistrate Judge is attached for your information.

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**NOTICE OF RIGHT TO CONSENT TO TRIAL BY UNITED STATES  
MAGISTRATE JUDGE**

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a United States Magistrate Judge of this district may, upon the consent of all parties, conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Consent forms are available in the Clerk's office. Counsel for the Plaintiff shall be responsible for obtaining the consent of all parties, should they desire to consent.

You should be aware that your decision to consent or not to consent is entirely voluntary and should be communicated solely to the Clerk of the Court. Only if all parties consent will the district judge or magistrate judge to whom the case has been assigned be informed of your decision.

Judgments of the United States Magistrate Judges are appealable to the United States Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure unless the parties at the time of their consent to trial before a magistrate judge agree upon review by the United States District Court.